

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

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United States of America :
-VS- : Criminal NO.: 05CR-00011Erie
KENNETH FLEETWOOD aka :
MICHAEL R. JOHNSON :

- - -

Sentencing of KENNETH FLEETWOOD aka MICHAEL R.
JOHNSON, taken before Judge Maurice Cohill, on Monday, March
13, 2006, at the United States Federal Courthouse, Courtroom
"B", 17 South Park Row, Erie, Pennsylvania, 16501, commencing
at 11:10 a.m. and concluding at 11:15 a.m.

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APPEARANCES:
For the United States:
Marshall Piccinini, Esquire

For the Defendant, K. Fleetwood:
Thomas Patton, Esquire

REPORTED BY: DENICE A. GRILL, RMR
FERGUSON & HOLDNACK REPORTING, INC.

P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

MR. PICCININI: Good morning.

MR. PATTON: Good morning, your Honor.

THE COURT: This is the time for the sentencing of Kenneth Fleetwood. Mr. Patton, have you and your client reviewed the presentence report?

MR. PATTON: We have, your Honor.

THE COURT: I have also. And I've also read the position papers filed by the government and by Mr. Patton on behalf of Mr. Fleetwood. And I also received this morning a letter that Mr. Fleetwood had addressed to the Court, delivered by Mr. Patton. And I have also read that letter. We'll make that presentence report part of the record under seal. And also the request that Mr. Patton made, that the letter be made part of the record. If there is an appeal taken, counsel on appeal would be permitted access to the report.

I am not aware of any information that has been withheld from the defendant which was given to the Court.

And in the wake of the recent decision by the United States Supreme Court of in United States v.

1 Booker, the sentencing guidelines are now advisory
2 only. However, the Court is still obligated to
3 consult with the sentencing guidelines in determining
4 imposition of a reasonable sentence.

5 Neither the government nor counsel for the
6 defendant have filed any legal or factual objections
7 to the presentence report.

8 So although as I said, I have reviewed the
9 position papers that each side has submitted. If for
10 appeal later on, the paper would be unsealed. I
11 guess since we are required at least to consider the
12 guideline levels, I'm going to make my finding with
13 respect to the guideline computations since there are
14 no factual or legal issues -- Well, I guess factual,
15 but no legal issues to be considered.

16 Initially, we find that the appropriate
17 offense level is 31, and the criminal history
18 category is Roman Numeral IV. And that the
19 applicable guideline range is 151 to 188 months'
20 imprisonment; supervised release of five years; a
21 fine range of \$15,000 to \$4,000,000; and a special
22 assessment of \$100.

23 At this time, Mr. Patton, is there anything
24 you wish to say or introduce any testimony on behalf
25 of your client?

1 MR. PATTON: Your Honor, we have no testimony
2 to introduce. And I know that you have read the
3 position with respect to sentencing factors, and I
4 know that the arguments that are -- that have been
5 put before you in those papers are very similar to
6 the arguments that were put forth before you in
7 Mr. Bennafield's case that we just had --

8 THE COURT: I understand the argument is
9 essentially the same in the two cases.

10 MR. PATTON: I do want to make clear to
11 Mr. Fleetwood, however, and I know your Honor has
12 given his case the individual consideration that it
13 deserves, but we don't -- it would not be helpful, I
14 don't think, to the Court to go at length over the
15 same arguments that we went through a half hour ago.

16 THE COURT: Certainly.

17 MR. PATTON: But I want to assure
18 Mr. Fleetwood that's not in any way trying to
19 shortchange him on an individualized sentence.

20 THE COURT: If an appeal would be forthcoming,
21 the Court would incorporate the argument you made in
22 the prior case.

23 MR. PATTON: I would ask the Court to consider
24 that the sentence that Mr. Fleetwood has served in
25 prison is one year. He has six convictions. I know

1 he has a number of arrests, but I would submit your
2 Honor cannot sentence him based solely on the basis
3 of an arrest record.

4 An arrest in and of itself means nothing.
5 There has never been any additional finding that
6 there was, you know, sufficient reason behind the
7 arrest. There has never been any kind of judicial
8 finding that Mr. Fleetwood, you know, committed
9 offenses in connection with those arrests.

10 I would like to address the idea that somehow
11 Mr. Fleetwood needs to be punished more harshly here
12 because he's from Cleveland rather than being from
13 Erie, which is the least implicit in that, if not
14 explicit --

15 THE COURT: I'm a Steeler football fan, but I
16 won't hold that against him.

17 MR. PATTON: If people in Erie weren't smoking
18 crack, it wouldn't matter. People could come in from
19 anywhere in the country. And they would stop coming
20 if they came to Erie and couldn't sell any other
21 drugs. It's, you know, sort of like the United
22 States lecturing Columbia or these days Afghanistan
23 about raising coca or opium. If the rest of this
24 country weren't clamoring for drugs and willing to
25 pay for them, there wouldn't be any problem.

1 Columbia could grow as much coca as they wanted, and
2 Columbia could grow poppy as much as they want.

3 But Mr. Fleetwood is no worse or better
4 because he's from Cleveland, than someone who comes
5 before your Honor and who is a resident of Erie who
6 obtains their cocaine from somewhere outside of Erie.

7 Obviously, you know, it's not being grown and
8 manufactured here. Everybody is getting it from
9 somewhere. So I would suggest that Mr. Fleetwood is
10 not and should not be sentenced any more harshly
11 because he's from Cleveland. Even if your Honor is
12 not inclined to give a sentence at the 120 month
13 mandatory minimum, as we argued in our position with
14 respect to sentencing factors, I would submit that a
15 sentence of 151 months, which is four months shy of
16 13 years, is sufficient to punish Mr. Fleetwood, and
17 to promote the purposes of sentencing that are laid
18 out in 18 United States Code Section 3553.

19 Mr. Fleetwood has provided your Honor with a
20 letter, as you mentioned. And I had spoken to him
21 about the matter this morning, and he wants that to
22 stand as his right of allocution to the Court.

23 THE COURT: Very well, and we will regard that
24 as such. You don't want to say anything else, Mr.
25 Fleetwood?

1 THE DEFENDANT: No, sir.

2 THE COURT: Mr. Piccinini.

3 MR. PICCININI: Thank you, your Honor. I will
4 also be brief because most of the arguments that I
5 would make to counter the defense's position would
6 also have been made in Mr. Bennafield's sentencing
7 this morning.

8 Your Honor, with regard to the Cleveland
9 issue, the government's request is not that you
10 punish these defendants more harshly because they're
11 from Cleveland in any way, but we make the point to
12 your Honor that in each of these cases, Mr. Fleetwood
13 being one of them, these guys started out as small
14 time drug dealers in a big city such as Cleveland and
15 decided to move their trade here to the relatively
16 small town of Erie, and became a relatively large
17 scale drug dealer.

18 And if you look at the quantities of cocaine
19 involved, from the small amounts over in Cleveland,
20 for whatever reason they decided to move here because
21 they might be under the radar screen.

22 But to move here and to have more than 160
23 grams of cocaine involved in this one particular
24 incident is of particular concern. And those --
25 That's The nature of the government's point with

1 regard to that. You know, you look at the
2 defendant's history -- And also know I'm not asking
3 the court to sentence him based upon his arrests.

4 There were 22 times that the man was arrested.
5 And for no other reason or indication to the court,
6 but that he's at least had contact with the law
7 enforcement, and you know, he keeps having these
8 contacts. No comment about whether he did anything
9 wrong. But sooner or later you've got to get the
10 picture, I've got to stop engaging in this activity.
11 Or second guess, because whether or not I have these
12 contacts, something is not right.

13 But when you add the 22 contacts to the
14 picture, and I believe the six adult convictions,
15 well then you see just a more heighten concern,
16 including other drug related cases. What's
17 interesting in the guidelines, they factor in
18 criminal history maybe -- or criminal history. But
19 they don't look at what that criminal history came
20 from. They don't look at the fact that multiple of
21 his prior convictions were cocaine related. And here
22 we are in Federal Court on a cocaine trafficking
23 offense.

24 And based on those considerations involved in
25 3553, we believe a sentence in the guideline range is

1 appropriate.

2 THE COURT: Thanks, Mr. Piccinini. Well, this
3 is quite similar to the case we just finished within
4 the last hour or so. I'm not going to repeat myself
5 to a great extent either. But the Sentencing
6 Commission in formulating these guidelines, the
7 defendants have to understand the worst thing about
8 protection of society, as well as what those members
9 of the commission I assume felt was a fair assessment
10 of the sentence toward the defendant.

11 But as I've said many times before, I'm really
12 concerned about the extent of the drug activity, so
13 to speak, that's descended on society in the last 20
14 years. I've seen it myself just expand by leaps and
15 bounds. And we have to take that into consideration
16 in determining what we consider to be a fair
17 sentence.

18 Is there any reason then, Mr. Patton, that
19 sentence should not be imposed at this time?

20 MR. PATTON: No, sir.

21 THE COURT: Mr. Fleetwood?

22 THE DEFENDANT: No.

23 THE COURT: Mr. Piccinini.

24 MR. PICCININI: No, your Honor.

25 THE COURT: After consulting the Sentencing

1 Guidelines, it's the judgment of the Court that the
2 defendant, Kenneth Fleetwood, is hereby committed to
3 the custody of the Bureau of Prisons to be in prison
4 for a term of 168 months.

5 Upon release from imprisonment, the defendant
6 shall be placed on supervised release for a term of
7 five years. Within 72 hours of release from the
8 custody of the Bureau of Prisons, the defendant shall
9 report in person to the Probation Office in the
10 district to which the defendant is released.

11 while on supervised release, the defendant
12 shall not commit another federal, state or local
13 crime; shall comply with the standard conditions of
14 supervision that have been recommended by the
15 Sentencing Commission and adopted by this Court;
16 and shall also comply with the following additional
17 conditions:

18 The defendant shall not illegally possess a
19 controlled substance.

20 The defendant shall not possess a firearm or
21 destructive device.

22 The defendant shall participate in a program
23 of testing, and if necessary, treatment for substance
24 abuse as directed by the probation officer, until
25 such time as the defendant is released from the

1 program by the probation officer. Further, the
2 defendant shall be required to contribute to the
3 costs of services for any such treatment in an amount
4 determined by the probation officer, but not to
5 exceed the actual cost. The defendant shall submit
6 to at least one drug urinalysis within 15 days of
7 being placed on supervision, and at least two
8 periodic tests thereafter.

9 The defendant shall cooperate in the
10 collection of DNA as directed by the probation
11 officer.

12 The Court finds that the defendant does not
13 have the ability to pay a fine. The Court will waive
14 the fine in this case due to the defendant's
15 inability to pay.

16 It is further ordered that the defendant shall
17 pay to the United States a special assessment in the
18 amount of \$100 which shall be paid to the U.S.
19 District Court Clerk forthwith.

20 We believe that a sentence of 168 months
21 followed by five years of supervised release
22 adequately addresses the nature and circumstances of
23 this offense, as well as the history and background
24 of the defendant.

25 I was particularly concerned when I read the

1 presentence report that the defendant had lied even
2 after being put under oath in front of the
3 magistrate, what his name was. And that certainly
4 mitigates against any mercy with the Court as well.

5 In imposing this sentence, we have considered
6 the kinds of sentences available, and the sentencing
7 range set forth in the guidelines, including any
8 relevant policy statements issued by the Sentencing
9 Commission.

10 This sentence takes into account the need to
11 avoid unwarranted disparities in sentencing among
12 defendants with similar records who have been found
13 guilty of similar conduct.

14 At the same time, this sentence reflects the
15 seriousness of this offense and provides just
16 punishment for it; and also promotes respect for the
17 law and affords adequate deterrence to criminal
18 conduct while protecting the public from further
19 crimes by this defendant.

20 We have considered the factors which are
21 outlined in Title 18, United States Code, Section
22 3553. In addition, we feel that this sentence will
23 give Mr. Fleetwood an opportunity to receive
24 additional educational or vocational training,
25 medical care, and any other correctional treatment

1 available in the federal prison system.

2 Mr. Fleetwood, you have a right to appeal
3 pursuant to the plea agreement. It apparently was --
4 There were certain restrictions on appeals in the
5 plea agreement.

6 MR. PICCININI: There were, your Honor, and
7 this is also a conditional appeal allowing the
8 defendant to appeal your suppression ruling in this
9 case and imposed on his --

10 COURT: Okay. Of course you do have the right
11 to appeal with respect to the conditional appeal, and
12 the other provisions related to this sentencing. An
13 appeal must be filed within ten days; you're entitled
14 to a lawyer at every stage of the proceedings, and if
15 you cannot afford an attorney, one will be provided
16 to you without charge.

17 I don't believe there are any counts to be
18 dismissed.

19 MR. PICCININI: There are not, your Honor.

20 MR. PATTON: Your Honor, again, we would
21 object to the condition of supervised release and
22 that Mr. Fleetwood provide DNA.

23 And we would also ask that you recommend to
24 the Bureau of Prisons that Mr. Fleetwood be housed at
25 FCI Elkton, which is located near Youngstown, Ohio so

1 Mr. Fleetwood could be near his family in Cleveland.

2 THE COURT: I'll make that a recommendation.

3 Did the last defendant have Elkton in mind
4 specifically as well?

5 MR. PATTON: He just wanted to be close to
6 Cleveland, but I believe Elkton is as close as there
7 is.

8 THE COURT: Okay.

9 MR. PATTON: I think you technically have to
10 rule on the objection of the DNA.

11 THE COURT: Okay, your objection is overruled.

12 MR. PATTON: Thank you.

13 (At which time, 11:15 a.m. the proceedings
14 were concluded.)

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C E R T I F I C A T I O N

I, Denice A. Grill, RMR, a Court Reporter and
Notary Public in and for the Commonwealth of Pennsylvania,
do hereby certify that the foregoing is a true and accurate
transcript of my stenographic notes in the above-captioned
matter.

Denice A. Grill, RMR
Registered Merit Reporter

DATED: _____